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EXAMINER

DOVE, TRACY MAE

ART UNIT

PAPER NUMBER

1795

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DELIVERY MODE

04/01/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

DETAILED ACTION

This Office Action is in response to the communication filed on 1/4/08. Applicant's arguments have been considered, but are not persuasive. Claims 1, 11, 12, 21 and 22 are pending. This Action is FINAL.

Drawings

The deletion of Figure 15 is required in this application because the new drawing sheet containing Figure 15 submitted 8/3/07 contains new matter. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

Specification

The amendment filed 8/3/07 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: the description of new Figure 15 on page 17, line 2; and on page 19, lines 5-11. As stated above, Figure 15 contains new matter. The specification as filed does not support ribs formed on the outside surface of the cover are positioned corresponding to the electrodes. The ribs are disposed symmetrically with the annular projections.

Applicant is required to cancel the new matter in the reply to this Office Action.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined

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application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1, 11, 12, 21 and 22 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-19 of U.S. Patent No. 6,773,850. Although the conflicting claims are not identical, they are not patentably distinct from each other because both require a shock-absorbing structure of a battery cover comprising a battery cover which protects at least one battery and a plurality of shock-absorbing ribs formed on an outer surface of the battery cover.

Examiner notes a terminal disclaimer was received on 1/4/08. The terminal disclaimer has not been reviewed by the paralegal staff to determine if it is proper. The double patenting rejection will be removed if the disclaimer is deemed proper.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 21 and 22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites “disposed at positions respectively corresponding to positions of a plurality of externally-threaded electrodes”, which is indefinite. It is unclear what “positions respectively corresponding to positions” encompasses.

To the extent the claims are understood in view of the 35 U.S.C. 112 rejections above, note the following prior art rejections.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1, 21 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Henk, US 4,400,449.

Henk teaches a battery having a top cover 43 with ribs 53 on the upper side of the cover. See Fig. 5 and col. 9, lines 11-14. The cover may comprise polystyrene (note the claims do not require the cover to *consist* of an insulating synthetic resin). Figure 5 is a top view of the battery of Figure 3 (7:7-8). The battery has electrodes. Thus the claims are anticipated.

Response to Arguments

Applicant's arguments filed 1/4/08 have been fully considered but they are not persuasive. Applicant argues newly submitted Figure 15 is supported by the specification as filed because the specification states ribs 2 are formed so as to be disposed at positions corresponding to the electrodes of the battery. Applicant states this is supported at page 19, lines 5-11 of the specification. However, the specification does not support the specific configuration

shown in newly submitted Figure 15. Furthermore, the claims have been rejected as indefinite because “positions respectively corresponding to positions” has not been clarified.

Regarding Henk, the rejection is made to the extent the claims are understood in view of the indefinite rejection. Applicant has not defined “corresponding to”.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tracy Dove whose telephone number is 571-272-1285. The examiner can normally be reached on Monday-Thursday (9:00-7:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, Pat Ryan can be reached on 571-272-1292. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

March 27, 2008

/Tracy Dove/

Primary Examiner, Art Unit 1795